

# **Appendix W**

## **Copies of Unique Comment Letters**

### **W.6 State Agency Comment Letters (S)**

Statement

**Governor's Representatives on Colorado River Operations  
States of Arizona, California, Colorado Nevada, New Mexico, Utah and Wyoming  
Department of the Interior Public Meetings  
Las Vegas – July 26, 2005  
Salt Lake City – July 28, 2005**

The Basin States support the process initiated by the Secretary of the Interior to develop shortage guidelines for the release of water from Lake Mead. These guidelines should be coordinated with anticipated releases from Lake Powell during low reservoir conditions.

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The economies of all seven Basin States depend on the effective management of the Colorado River System reservoirs. The primary objective in the development of such strategies must be the conservation of water supply consistent with the purposes for which Lakes Mead and Powell were authorized by the Congress.

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The Basin States are committed to work cooperatively together with the Department of the Interior in the development of these strategies. We have agreed that shortage guidelines should be designed to delay the onset and minimize the extent and duration of shortages in the Lower Basin. Also, we have agreed that management strategies should maximize the protection afforded to the Upper Basin by Lake Powell against possible calls upon the Upper Basin to curtail uses. Finally, the shortage guidelines should be premised upon proportionate sharing of shortages by Mexico pursuant to the Mexican Treaty.

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We look forward to continuing to work with the Department in this process.

Herb Guenther  
Director  
Arizona Department of Water Resources

Gerald R. Zimmerman  
Executive Director  
Colorado River Board of California

Scott Balcomb  
Governor's Representative  
Colorado

Patricia Mulroy  
General Manager  
Southern Nevada Water Authority

Richard Bunker  
Chairman  
Colorado River Commission of Nevada

John D'Antonio  
Governor's Representative  
State of New Mexico

Patrick Tyrrell  
State Engineer  
State of Wyoming

D. Larry Anderson  
Director  
Utah Division of Water Resources

Mr. Robert W. Johnson  
Regional Director, LC-1000  
Lower Colorado Region  
Bureau of Reclamation  
Department of the Interior  
P.O. Box 61470  
Boulder City, NV 89006-1470

Reference: Interior's Low Reservoir Management Strategies - Colorado River

Dear Mr. Johnson:

The Arizona Power Authority (Authority) is a body corporate and politic of the State of Arizona authorized under Arizona Revised Statutes in 1944 for the express purpose of, among others, receiving and administering hydroelectric power produced from the main stem of the Colorado River contiguous with the State of Arizona's boundaries. It is within this context that the Authority offers the following comments on the Secretary of the Interior's request for the Bureau of Reclamation (Reclamation) to develop a management strategy for Lake Powell and Lake Mead, including Lower Basin shortage guidelines, under low reservoir conditions. The Authority appreciates this opportunity to provide comments on this extremely critical subject.

The Authority has entered into a package of two important contracts with Reclamation which require attention when considering changes in the storage and release patterns on the Colorado River. The first contract, between the Authority and Reclamation (Contract No. 7-07-30-P1019 dated January 27, 1987) provided for the Authority to contribute \$57,178,466 in "up-front" funding for the rewinding and uprating of the generating units at Hoover Dam. The second, entered into by the authority with the Department of Energy, Western Area Power Administration (Western) and Reclamation (Contract No. DE-MS65-86WP39574, dated January 1, 1987), provides for the purchase of hydroelectric power from the Boulder Canyon Project's Hoover Dam for the period 1987 to 2017. For Reclamation to join Western in signing an electric service contract was an exceptional event that occurred only as part of an arrangement in which the Hoover

Schedule B contractors were providing “up-front” funding for the rewinding and uprating of the Hoover generating units. Reclamation was therefore willing to provide its contractual commitment that the power would be generated in accordance with the capacity and energy entitlements contracted for by the Hoover power contractors with the limited exceptions set forth in section 5.1.1.1 and 5.1.1.2 of the contract which states:

“Subject to the statutory requirement that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights mentioned in section 6 of the Boulder Canyon Project Act; and third, for power, Reclamation shall release water, make available generating capacity, and generate energy, in such quantities, and at such times, as are necessary for the delivery of the capacity and energy to which Contractors are entitled. Reclamation reserves the right to reschedule, temporarily discontinue, reduce, or increase the delivery of water for the generation of electrical energy at any time for the purpose of maintenance, repairs, or replacements, and for investigations and inspections necessary thereto, or to allow for changing reservoir and river conditions, or for changes in kilowatthours generation per acre-foot, . . . .”

Any reduction in the amount of water stored in Lake Mead reduces the head available for power production and therefore reduces the amount of the power produced for the Hoover power contractors. Changes in the time of releases can have a negative impact on the value of the power produced. In either case the value of the bargain for the Hoover power contractors is reduced. The Hoover power contractors recognized the variability of river hydrology when they contracted with Western and Reclamation. They accepted the risk of unpredictable river flows. They did not accept the risk that a federal agency might reduce the benefit of their bargain by changes which the federal government chose to make in the operation of the river. That was the assurance that Reclamation committed to in section 5.1.1 of each contractor’s Electric Service Contract.

The Authority supports Reclamation’s undertaking the kind of review that it has proposed in order to assure that the potential benefits of improved river operations can be explored and an optimum operating strategy can be implemented. In order to assure that any modification of the operating strategy does not deprive the Hoover power contractors of the benefit of the bargain that they, Western and Reclamation mutually committed to in 1987, the Authority requests that Reclamation adopt the following practices in developing management strategies for low reservoir conditions at Lake Powell and Lake Mead, and for shortage criteria for the lower Colorado River basin.

- ! For each operating strategy proposal, Reclamation should run sensitivity studies to determine the impact on Hoover power production. The results of those sensitivity studies should be made available to the Hoover power contractors with an explanation

of any reduction in the amount of power that will be generated and any change in the timing of generation.

! Reclamation should propose methods to minimize and fully mitigate any adverse impacts on the amount and value of the power that the Hoover power contractors will receive. | 2

! Reclamation should discuss the package of proposed changes and proposed mitigation with the Hoover power contractors prior to their adoption. | 3

The Authority supports the use of an open rule-making process with the understanding that the product will be incorporated into the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs and the Annual Operating Plans as appropriate. | 4

One again, the Authority appreciates this opportunity to comment on the process to be used in this important undertaking.

Respectfully submitted,

*/s/ Joseph W. Mulholland*

Joseph W. Mulholland  
Executive Director

AUG-31-2005 17:56

AZ GAME AND FISH DEPT

6027893928 P. 02/05



THE STATE OF ARIZONA  
**GAME AND FISH DEPARTMENT**

2221 WEST GREENWAY ROAD, PHOENIX, AZ 85023-4399  
 (602) 942-3000 • AZGFD.GOV

GOVERNOR  
 JANET NAPOLITANO  
 COMMISSIONERS  
 CHAIRMAN, W. HAYS GILSTRAP, PHOENIX  
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 DEPUTY DIRECTOR  
 STEVE K. FERRELL



August 31, 2005

Mr. Robert W. Johnson  
 Regional Director, Lower Colorado Region  
 U.S. Bureau of Reclamation  
 Attention: BCOO-1000  
 P.O. Box 61470  
 Boulder City, NV 89006-1470

Re: Colorado River Reservoir Operations: Development of Management Strategies for  
 Lake Powell and Lake Mead Under Low Reservoir Conditions

Dear Mr. Johnson:

The Arizona Game and Fish Department (Department), by and through the Arizona Game and Fish Commission, manages the state's wildlife resources on behalf of the citizens of the State of Arizona. Additionally, the Department has responsibility for managing and providing opportunities for the enjoyment of those resources through boating, hunting, fishing and off-highway vehicle recreation programs. With consideration to the Department's management responsibilities, we respectfully offer comments for consideration in the development of management strategies for lakes Powell, and Mead and the lower Colorado River under low reservoir conditions.

First, we commend the Bureau of Reclamation (Bureau) for taking on this substantial endeavor. Through wise use and conservation of the water resources of the seven Colorado Basin states and by working cooperatively with all of the Bureau's partners along the river, together, we can secure our future and continue to provide the unique wildlife resources and recreational opportunities that the Colorado River has to offer. Our comments relate to the development of shortage criteria, and fall into two general categories: 1) issues the Department recommends be considered for analysis under the National Environmental Policy Act (NEPA) (& the Endangered Species Act for the preferred alternative), and 2) issues related to coordination under the Fish and Wildlife Coordination Act as Arizona negotiates water shortages with other basin states.

- 1) Issues that the Department would recommend be considered under various operational alternatives, should these alternatives be reviewed under NEPA include:
  - Effects of mainstem reservoir operations on sportfishing (timing and rates of drawdowns may have substantial negative effects to sportfish reproduction and

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Mr. Robert W. Johnson

August 31, 2005

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recruitment) and access for recreational boaters and anglers (lack of suitable access points) are considerable concerns. Similar access issues and effects to sportfish reproduction may extend to downstream reservoirs (Mohave and Havasu) if those reservoirs are held or operated at a lower elevation.

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• Recreational sportfishing provides significant economic benefit to the local communities. Lakes Mead and Powell provide for 362,838 angler days. The Colorado River below Glen Canyon Dam (Lees Ferry) and Hoover Dam (Willow Beach) provide an additional 45,215 angler days. Combined, this recreational activity yields a total economic benefit (direct and indirect) of approximately \$84 million. This is substantial, especially to the economy of Page, Arizona.

• Operation of the reservoirs may negatively affect stream flows in the riverine sections below each dam by altering tailwater fisheries and their suitability for maintaining viable fish populations through adverse changes to water quality (primarily changes in dissolved oxygen and temperature). We would recommend that the Bureau consider effects of decreased instream flows on fish and wildlife resources.

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• The potential exists for indirect impacts to the continued operation of Willow Beach National Fish Hatchery as a production facility for rainbow trout and continued production of the endangered razorback sucker, should Lake Mead releases not meet minimum water quality standards for those purposes.

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• Declining water levels both in reservoirs and along the river as a result of changed operational strategies may negatively affect riparian vegetation through decreased persistence of established riparian vegetation along the banks. As you know, these riparian areas support many species of wildlife, including threatened and endangered species. Decreased river flows may also have an impact on currently established backwaters and off-channel marshes that provide habitat for fish and wildlife resources as well as many recreational opportunities for our citizens. Effects to these habitats by operation of the river may include, but not limited too; water quantity available to maintain them; water quality including dissolved oxygen, concentration of pollutants, increased salinity or radical temperature fluctuations; loss of connectedness between the main-river and off-channel habitats. Some of these effects may prove to be beneficial to some species and provide wildlife managers added opportunities for management actions along the river.

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• We would also recommend that the Bureau consider, where appropriate, effects of river operations that may occur outside of the Colorado River.

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Mr. Robert W. Johnson

August 31, 2005

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Colorado River operations will likely necessitate adjustments be made on other water supply operations in central Arizona such as Alamo Dam, Lake Pleasant and the Salt River reservoirs impoundments (Roosevelt, Apache, Canyon, Saguaro, Horseshoe and Bartlett). The Department would also like effects to our Mittry Lake Wildlife Area by changed river operations considered in any analysis conducted. Changes in river operations will affect Federal refuges along the river and a full impact to fish and wildlife resources and recreation should be considered.

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- The Department is a party to the Lower Colorado River Multi-Species Conservation Plan (MSCP). During development of the HCP and Section 10 permit, water shortages were considered and analyzed, but only up to a shortage of 1.5 may (million acre-feet per year). Any shortage beyond that would not be covered under the MSCP and may thus result in a need for further consultation with the U.S. Fish and Wildlife Service. If a shortage results in the loss of water available to establish or maintain mitigation properties and habitats established under the MSCP, it may result in take of threatened or endangered species or habitats not covered by the HCP and Section 10 permit. Due to the long-term nature of the MSCP, opportunities may exist to mitigate for short-term reductions in river flow by increasing and improving MSCP mitigation habitats in years when a surplus of water on the river is declared. We expect that the Bureau will fully analyze development of shortage criteria relative to the MSCP language, authorities, and assurances provided therein.

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- Opportunities may arise during operation of the river under shortage criteria that allow for improved fish and wildlife management. These may be in the form of the ability to more easily construct and maintain various habitat features along the river, provide for treatment of invasive plants, renovation of isolated waters to remove non-native fish, expose suitable soils for establishment and development of additional cottonwood/willow riparian areas, allow for installation of fish habitat improvement structures in reservoirs, and provide for growth of vegetation in exposed lake bottoms to improve fish habitat. Lower water levels in the reservoirs and in the river may provide an opportunity/need to address where additional recreational facilities such as boat ramps, docks, fishing piers and marinas may be warranted.

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- 2) The second general issue is related to ongoing negotiation between the lower basin states on shortage sharing. Should Congressional action be pursued to establish shortage sharing criteria, our Department will work with the other states to develop a report to congress under the Fish and Wildlife Coordination Act to provide them with information on impacts in the lower basin.

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Mr. Robert W. Johnson  
August 31, 2005  
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We appreciate the opportunity to provide input on the development of management strategies for Lake Powell and Lake Mead under low reservoir conditions. We look forward to working with you closely as this process moves forward. Please contact Bob Broscheid, Habitat Branch Chief, at 602-789-3605 if you have any questions regarding this letter.

Sincerely,



Bruce D. Taubert, Assistant Director  
Wildlife Management Division

BDT:dw

CC: Jim deVos, Chief, Research Branch  
Bill Persons, Research Branch  
Eric Gardner, Chief, Nongame Branch  
Larry Riley, Chief, Fisheries Branch  
Rick Miller, Habitat Program Manager, Region II  
Kevin Morgan, Habitat Program Manager Region III  
Russ Engel, Habitat Program Manager, Region IV

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08/30/2005 15:24 FAX 505 827 0180

INTERSTATE STREAM COMM.  
STATE ENGINEER

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08/29/05 MON 14:08 FAX 505 827 3808

**The States of Arizona, California, Colorado, Nevada,  
New Mexico, Utah and Wyoming  
Governor's Representatives on Colorado River Operations**

August 25, 2005

Honorable Gale A. Norton, Secretary  
Department of the Interior  
1849 C. Street, NW  
Washington, D.C. 20240

Re: Development of Management Strategies to Address Operations of Lake  
Powell and Lake Mead under Low Reservoir Conditions

Dear Secretary Norton:

This letter responds to your May 2, 2005, letter to the Governors of the Seven Colorado River Basin States (basin states) in which you announced your intent to undertake a process to develop Lower Basin shortage guidelines and to explore management options for the operation of Lakes Powell and Mead. The Bureau of Reclamation published a notice on June 19, 2005, in the Federal Register announcing its intent to solicit comments and hold public meetings on the development of management strategies for Lakes Powell and Mead, including Lower Basin shortage guidelines, under low reservoir conditions.

For more than a year, the basin states Governors' representatives, the Bureau of Reclamation, and others have engaged in discussions on a variety of potential management options to address the system-wide drought in the Colorado River Basin. Recently, the basin states agreed that management strategies should be designed to delay the onset and minimize the extent and duration of shortages in the Lower Basin. The states agreed that management strategies should maximize the protection afforded to the Upper Basin by Lake Powell against possible calls upon the Upper Basin to curtail uses. The states agreed that shortage guidelines should be promised upon proportionate sharing of shortages by Mexico pursuant to the Mexican Treaty.

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The basin states are in the process of developing and evaluating alternatives for coordinated reservoir management and Lower Basin shortage strategies to address the above objectives. In addition, the basin states are exploring a larger, more comprehensive management arrangement. This arrangement would avoid political and legal confrontation over the meaning of fundamental aspects of the Law of the River; supplement the supply of Colorado River water; develop acceptable interim shortage guidelines for the Lower Basin; and realize a common goal to implement management strategies that might allow more efficient, flexible, responsive and reliable operation of the system reservoirs for the benefit of the states of both the Upper and Lower Basin. The states regard such an arrangement as important to the continued development and use of the Colorado River resource in both the Upper and Lower Basins. The Secretary

08/30/2005 15:25 FAX 505 827 6188

INTERSTATE STREAM COMM.

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08/29/05 MON 14:09 FAX 505 827 3806

STATE ENGINEER

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The Honorable Gale A. Norton  
 August 25, 2005  
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should recognize that the coordinated management and shortage strategy outlined in this letter is recommended only on the condition that the other aspects of that more comprehensive management arrangement can be finally agreed upon and implemented by the states and the Secretary.

The states propose that any reservoir operational strategy developed by the Secretary be explicitly limited to an interim period. The interim operations should be tied to the implementation of additional measures that will accomplish the dual objectives of supplementing the supply of the Colorado River, and operating the existing infrastructure in the system more efficiently. The elements set forth in this letter are interrelated, and represent an integrated strategy for managing the Colorado River into the future. Therefore, all of the elements of this strategy will need to be implemented. In addition, practical resolution of differences among the basin states regarding mainstream and tributary development will be required. The states' strategy consists of three elements. 4

#### **Coordinated Reservoir Management and Lower Basin Shortage Strategies**

The states are discussing ways to utilize the water surface elevations or volumetric contents of both Lake Mead and Lake Powell to determine the beginning and end of a Lower Basin shortage condition. The strategy could incorporate various water management components including: tiered releases from Glen Canyon Dam; content balancing; alternative release schedules; continued operations under Section 602(a); other equalization strategies; and storage (banking) of water in Lake Mead. All of these operational components are currently being studied under the assumption that the Lower Basin shortage strategy would be two-tiered, the first tier protecting a Lake Mead water surface elevation of 1,050 feet, and the second tier assuring maintenance of a Lake Mead water surface elevation of 1,000 feet. 5

There may be additional reservoir water surface elevations identified to help achieve the management objectives prior to the actual declaration of a shortage. The quantities of reductions in demand are still being analyzed. After consultation with water users and completion of the analyses, the basin states will recommend conditions under which the Secretary may declare that insufficient water will be available for release from Lake Mead to satisfy 7.5 maf of consumptive use from the mainstream in the Lower Basin, and a delivery of 1.5 maf to Mexico. The basin states will also recommend reductions in deliveries that can be reasonably managed by the states and water users during the interim period. A plan to manage the shortage condition and to allocate reductions among water users within the Lower Basin will be developed and recommended to the Secretary. Acceptance of the recommendations is an essential condition for the success of an integrated strategy for the operation of the Colorado River.

The coordinated operational policies and procedures for the storage of water in and release of water from Lakes Mead and Powell may apply during a defined interim period consistent with the Interim Surplus Guidelines (until 2016, or as the ISG might be modified and extended), or for so long thereafter as may be necessary to achieve selected target elevations in Lakes Powell and Mead. Power and recreational impacts of such operations will be coordinated, but water supply operations will remain the first priority of coordinated operations.

08/30/2005 15:25 FAX 505 827 6186

INTERSTATE STREAM COMM.

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08/29/05 MON 14:09 FAX 505 827 3808

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The Honorable Gale A. Norton  
August 25, 2005  
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Shortages to Mexico under the 1944 Treaty would be shared proportionately with those incurred by the Lower Basin states, as shortages may be imposed under the shortage guidelines. The states anticipate that shortages to both Mexico and the Lower Basin will be reduced proportionately with the implementation of the coordinated operation strategy.

Because such coordinated operations may alter the volume of water delivered from Lake Powell from that under existing operations during times of low reservoir conditions, the states are evaluating the effects that coordinated reservoir management may have on the recently adopted Interim Surplus Guidelines, as well as considering whether to agree that during the interim period they will not raise issues of the meaning, interpretation or enforcement of the Colorado River Compact, the 1968 Colorado River Basin Project Act, or other aspects of the Law of the River concerning any obligation of the Upper Basin to meet any requirement at Lee Ferry. The states are considering whether agreement not to raise Law of the River issues will continue to the end of the interim period, or longer.

**System Efficiency and Management**

The basin states will work with the Department of the Interior to analyze and implement a program of tamarisk eradication throughout the basin. The states believe such a program may yield multiple benefits to the environment and water supply of the basin.

The basin states will work with the Department of the Interior to develop a prioritized list of specific measures that will result in the more efficient management of the River in the Lower Basin. Initial priorities for implementation will include development of All-American Canal Drop 2 storage, evacuating accumulated sediments behind Laguna Dam, development of Wellton-Mohawk regulatory storage, and full utilization of Senator Wash Reservoir.

Additionally, the states are discussing measures to better coordinate daily system operations and water orders of contractors in the Lower Basin to prevent the loss of water. It will be necessary for the Department to take all necessary actions to account for and replace water that has been released to Mexico through the bypass drain since 2004, and continue to implement measures that minimize the over-deliveries of water to Mexico. It will also be necessary for the Department to aggressively pursue elimination of unauthorized uses of Colorado River water in the Lower Basin.

**Augmentation of Supply**

The basin states will work with the Department of the Interior to implement a precipitation management (cloud seeding) program in the basin (both Upper and Lower). Any additional water generated to the Colorado River system will be considered system water. No entity or state will have any claim to any additional supply developed by precipitation management.

The basin states will work with the Department of the Interior to analyze the technological feasibility of desalination, and issues such as siting, environmental impacts and the potential to exchange desalinated water into the Colorado River system.

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00/09/05 MON 14:10 FAX 505 827 3808

INTERSTATE STREAM COMM.  
STATE ENGINEER

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The Honorable Gale A. Norton  
August 25, 2005  
Page 4 of 5

The states are discussing programs under which states may provide, and get the benefit of, individual supply augmentation including desalination; ground water developed and conveyed to add to the Colorado River system; tributary water that has been consumptively used for irrigation that is retired to permit its flow into the Colorado River; temporary consumptive use of additional water from Lake Mead; and wastewater that is generated by the direct use of any water and that is permitted to flow into the Colorado River. The basin states will work with the Secretary to explore additional methods of augmentation. It will be necessary for the Secretary to develop and implement regulations to allow the use of mainstream Colorado River water by forbearance, replacement or exchange.

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The basin states representatives recommend that the Secretary adopt interim guidelines, concurred to by the states, for the implementation of the Long Range Operating Criteria (LROC) under low reservoir conditions in Lakes Mead and Powell, together with interim shortage guidelines in the Lower Basin. If at the end of the interim period changes to the LROC are warranted, then the Secretary may consider such changes.

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Finally, the basin states recognize that the concepts discussed in this letter raise potentially significant legal and political issues. The basin states look forward to working with you and the Department in analyzing and addressing these issues.

[Signatures on Following Page]

08/30/2005 15:27 FAX 505 827 8188  
08/29/05 MON 14:10 FAX 505 827 3606

INTERSTATE STREAM COMM.  
STATE ENGINEER

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The Honorable Gale A. Norton  
August 25, 2005  
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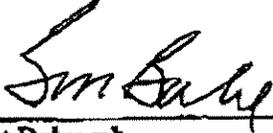
Sincerely,



Herb Guenther  
Director  
Arizona Department of Water Resources



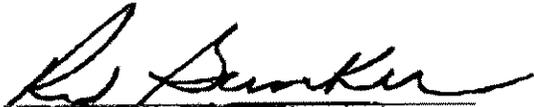
Gerald R. Zimmerman  
Executive Director  
Colorado River Board of California



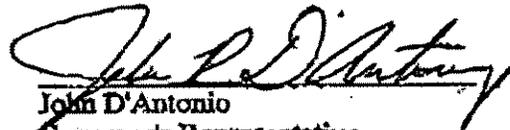
Scott Balcomb  
Governor's Representative  
Colorado



Patricia Mulroy  
General Manager  
Southern Nevada Water Authority



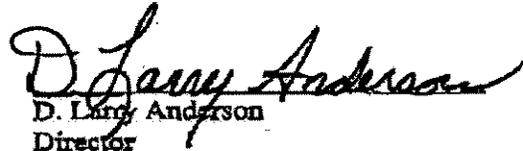
Richard Bunker  
Chairman  
Colorado River Commission of Nevada



John D'Antonio  
Governor's Representative  
State of New Mexico



Patrick Tyrrall  
State Engineer  
State of Wyoming



D. Larry Anderson  
Director  
Utah Division of Water Resources

S-2001 AZ Dept of Water Resources.txt  
From: Nan Yoder [nyoder@l.c.usbr.gov]  
Sent: Tuesday, November 29, 2005 1:28 PM  
To: LC strategies  
Subject: Re: Arizona's 602(a) scoping letter

>>> "Herb Guenther" <hrguenther@azwater.gov> 11/28/05 3:48 PM >>>  
November 28, 2005

Good Afternoon Mr. Johnson,  
The attached letter was faxed and will be in today's mail as well.  
Arizona Department of Water Resources moved this past weekend. Our  
new address is:  
3550 North Central Avenue  
Phoenix, AZ 85012-2105  
Our Main Switchboard is (602) 771-8500  
Director Guenther's direct line is (602) 771-8426 and his fax  
number will be (602) 771-8681 (line should be operational by the  
end of the day November 29th).  
Our e-mail addresses remain the same.

**ARIZONA DEPARTMENT OF WATER RESOURCES**

3550 North Central Avenue, Phoenix, Arizona 85012-2105

Telephone (602) 771-8426



November 28, 2005

JANET NAPOLITANO  
Governor

HERBERT R. GUENTHER  
Director

**[Via Facsimile (702) 293-8156  
and Regular Mail]**

Mr. Robert W. Johnson  
Regional Director  
Bureau of Reclamation  
Lower Colorado Region  
1000, P.O. Box 61470  
Boulder City, Nevada 89006-1470

***Re: Arizona's Comments Concerning Scope of Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions***

Dear Mr. Johnson:

The Arizona Department of Water Resources (Department) submits the following comments regarding the scope of the environmental impact statement (EIS) for the proposed *Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions* (70 Fed. Reg. 189 (September 30, 2005)) (hereinafter Shortage Guidelines). The Department requests that the Bureau of Reclamation draft the scope of the Shortage Guidelines broadly enough to incorporate an alternative that includes all of the following actions:

1. The EIS evaluation for the Shortage Guidelines should include a complete review of Section 602(a) of the Colorado River Basin Project Act of 1968 (Project Act) and the 602(a) storage algorithm (algorithm) used to determine releases from Lake Powell. The present method for calculating 602(a) storage requirements results in the overstatement of the amount of storage in the Upper Basin reservoirs that is intended to protect against curtailment in the Upper Division States. Currently, 5.179 million acre-feet (maf) are added to the 602(a) storage requirement for power protection. That, in turn, arbitrarily reduces the probability of equalization and increases the likelihood of shortages to Arizona.

The Department requests that the alternative remove power protection from the algorithm. At a minimum, any alternative provided for in the EIS should recognize that water supply for consumptive uses has a higher priority than water supply for power.

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2. The Department requests that the alternative use actual Upper Basin depletions and projected new depletions that are verifiable to calculate the 602(a) storage requirement on an annual basis. The projected Upper Basin depletion schedules currently used in the algorithm are significantly overstated. This overstatement results in an increase in 602(a) storage of approximately 3.8 maf in 2006 and 2007, which increases the probability of shortages to Arizona. The Department recommends that Reclamation utilize the Upper Basin depletion projections contained in the Draft Interim Surplus Guidelines Environmental Impact Statement as they track far more closely with actual Upper Basin depletions than do the current Upper Basin depletion schedules used in the algorithm. 5
3. The Department requests that the alternative eliminate the 14.85 million acre-feet (maf) storage requirement set forth in the Interim 602(a) Storage Guideline for Management of Colorado River (Interim 602(a) Storage Guideline). The guideline artificially limits equalization releases and will have the same detrimental effect on the State of Arizona as the current algorithm. The amount of 14.85 maf is far in excess of the amount needed to fulfill the requirements of 602(a) of the Project Act. 6

The Department also notes that the Secretary does not appear to be considering the available storage in all of the reservoirs authorized by the Colorado River Storage Project Act, 43 U.S.C. § 620 *et seq.* in determining whether forecasted active storage in the Upper Basin is greater than the Section 602(a) storage requirement under subarticle II(3) of the Coordinated Long-Range Operation of Colorado River System Reservoirs. If this is the case, the Department requests that the Secretary adjust the Colorado River System Simulation Model to properly calculate active storage in the Upper Basin. 7

Finally, the Department requests that any alternative incorporate Arizona's recommendation for total Lower Basin shortages, which includes Mexico. Arizona's recommended shortages range in volume from 400,000 acre-feet (af) to 600,000 af and would be implemented as follows: 8

- a. For Mead elevations between 1075 ft. and 1050 ft., the shortage reduction should be 400,000 af. 9
- b. For Mead elevations between 1050 ft. and 1025 ft., the shortage reduction should be 500,000 af.
- c. For Mead elevations beginning at elevation 1025 ft. and below, the shortage reduction should be 600,000 af.

Hydrologic conditions that could necessitate reductions in excess of 600,000 af must trigger a Secretarial consultation process to determine how to implement additional reductions in the least damaging and most equitable manner possible. Further, if hydrologic conditions indicate that Powell elevations are rising and may reach equalization elevations in the coming year, the Secretary may have the discretion, after consultation with Arizona, to forego a shortage declaration even if a Lake Mead trigger elevation has been reached. 10  
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The Seven Colorado River Basin States continue to collaborate on the development of conjunctive operation of Lakes Powell and Mead to minimize shortages to the Lower Division States and avoid curtailment on the Upper Division States. Arizona is committed to finding a solution that benefits both basins. It is crucial, however, that the EIS be scoped broadly enough to include an alternative that incorporates the above adjustments to 602(a) storage and that all alternatives include Arizona's recommendation regarding shortages as outlined above. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Herbert R. Guenther".

Herbert R. Guenther

HRG:ckl

November 30, 2005

Mr. Robert Johnson [rjohnson@lc.usbr.gov](mailto:rjohnson@lc.usbr.gov)  
 Mr. Rick Gold [rgold@uc.usbr.gov](mailto:rgold@uc.usbr.gov)

The states of Utah, Colorado, New Mexico and Wyoming have received a copy of the Arizona Department of Water Resources (ADWR) letter to you dated November 28, 2005. The letter suggests several comments concerning the scope of the environmental impact statement (EIS) for the proposed *Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions* (70 Fed. Reg. 189 (September 30, 2005)) (hereinafter Shortage Guidelines).

We think it important that you understand our thoughts and position on ADWR's suggestions. By letter dated August 25, 2005, all seven basin states outlined our plan "to collaborate on the development of conjunctive operations of Lakes Powell and Mead to minimize shortages to the Lower Basin states and avoid curtailment of Upper Basin states."

We view the ADWR suggestions to be entirely inconsistent with the actions and commitments described in the August 25 letter. In that letter, all seven states envisioned a process by which agreements could be reached concerning river operations to achieve defined and agreed-upon goals. The ADWR correspondence appears to us to retreat from both that process and those goals despite its intent to "continue to collaborate" whatever that means. Should the Bureau of Reclamation wish to include a "full range" of alternatives, we in the Upper Division have some very specific alternatives that should be given consideration. If necessary, we expect the Bureau to consult with the Basin States in the development of such alternatives. They also, however, might be viewed as a retreat from our commitment of August 25.

Utah, Colorado, Wyoming, and New Mexico are committed to pursue the process and goals described in our August 25, 2005 letter. We trust that your scoping process will facilitate, not undermine those efforts.

Very truly yours,

Scott Balcomb  
 Governor's Representative, Colorado

Patrick Tyrrell  
 State Engineer, Wyoming

D. Larry Anderson  
 Director, Utah Div. Water Resources

John D'Antonio  
 Governor's Representative, New Mexico

cc: Lower Basin State Representatives

S-2003

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

COLORADO RIVER BOARD OF CALIFORNIA

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November 30, 2005

Mr. Robert W. Johnson  
Regional Director  
U.S. Bureau of Reclamation  
Lower Colorado River Region  
Attn: BCOO-1000  
PO Box 61470  
Boulder City, Nevada 89006-1470

**RE: NEPA scoping for interim shortage guidelines and coordinated operation of Lakes Mead and Powell**

Dear Mr. Johnson:

The purpose of this letter is to provide the U.S. Bureau of Reclamation (Reclamation) with comments from the Colorado River Board of California (Board) regarding Reclamation's NEPA process for the development of lower basin interim shortage guidelines and coordinated management strategies for the operation of Lake Powell and Lake Mead. The Board appreciates this opportunity to provide comments on matters of such significance concerning Colorado River operations.

Although the Board's interests in this NEPA process are very broad in scope, it is our understanding that the current process of public meetings and accepting written comments is focused largely on the scoping phase of the NEPA process. Accordingly, the following comments will be confined to scoping issues with the understanding that the Board and the public generally will have additional opportunities to address other aspects of these important operational considerations. With that focus in mind the Board offers the following scoping comments:

A. Interim shortage guidelines:

1. Full Range of Reservoir Operations -- The Board believes that as guidelines are developed for the operation of Lake Mead, such guidelines must be for the full range of expected operations. As such, the guidelines that are being developed to describe Lake Mead's operations under low runoff and low reservoir conditions must run concurrent with the guidelines for operation of the reservoirs for high runoff and high reservoir conditions. Thus, the shortage guidelines for the Lower Basin should be through 2016, unless through this process, the existing Interim Surplus Guidelines are extended or modified to run concurrent with the term of the interim shortage guidelines.

2. Guidelines as Opposed to Regulations -- As suggested above, the shortage rules that are being contemplated by the Secretary should be in the form of guidelines as opposed to formal federal regulations. This approach would parallel the process that was undertaken for the recently-issued Interim Surplus Guidelines, would allow for modification at the end of the interim period, and would

Mr. Robert W. Johnson  
November 30, 2005  
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avoid the complexity and bureaucratic process of issuing formal federal regulations. While the Board appreciates that eventually formal long-term shortage rules may be embodied in regulations, at this stage informal guidelines are appropriate.

3. Interim Period -- The Board believes that any lower basin shortage guidelines issued by the Secretary should be effective for an interim period only (through 2016 unless the Interim Surplus Guidelines are extended or modified as described in 1. above). There are several very important reasons for this approach. First, it is appropriate for interim shortage guidelines to be structured in a temporal manner similar to the recently-issued Interim Surplus Guidelines. This will allow the states and other interested parties to deal with these two related operational structures in a similar manner and on a similar timeline. Second, Reclamation, the Basin states, and other interested parties need an opportunity to test shortage guidelines before long-term regulations are implemented on a more permanent basis. And third, since the interim shortage guidelines are linked to the possible issuance of new reservoir operation strategies, it is appropriate to explore the consequences of such operational modifications before more permanent shortage guidelines are adopted.

4. Apply to Post-1968 Entitlements -- There are groups of water entitlements within the Lower Basin's water rights structure and those groups are a function of factors such as priority dates, the structure of the 1964 Supreme Court decree, and the influence of statutes such as the 1929 Boulder Canyon Project Act and the 1968 Colorado River Basin Project Act. As a result, there are groups of entitlements: the pre-June 25, 1929 group, the June 25, 1929 to September 30, 1968 group, and the post-September 30, 1968 group. With regard to declaring shortages in the Lower Basin, the Law of the River provides different guidance in relation to these different groups of entitlements. Accordingly, since these guidelines should be in force for an interim period only, the interim shortage guidelines should cover only that group of entitlements that are post-September 30, 1968 in priority. This block of water is large enough to deal with likely shortage events during the interim period. Furthermore, extending the guidelines into the next group of entitlements, from 1929 to 1968, will raise numerous difficult issues concerning interpretation of the terms of the 1964 Supreme Court decree, the meaning of provisions in various water delivery contracts, and other complex issues that would only serve to greatly delay this NEPA process.

Also, during the process of development of the interim shortage guidelines, there must be clarification for the public of the post-1968 non-Central Arizona Project rights in Arizona and the post-1968 rights in Nevada in order to determine how the shortages will be distributed among the post-1968 entitlements. This clarification should, first, be conducted in consultation with Arizona and Nevada. When clarified, the NEPA documents should address the manner in which the water demands within the states affected by a shortage declaration will be managed. This approach would be comparable to the one used to develop Exhibit B contained in the 2003 Colorado River Water

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Delivery Agreement executed by the Department of the Interior pursuant to the Interim Surplus Guidelines.

Since a hydrologic sequence of events worse than a repeat of the historic hydrologic conditions could occur during the interim period, a shortage of a larger magnitude could result. In such a situation, the Secretary may have to address the cut-back of rights in the 1929 to 1968 pool of entitlements. Thus, the interim guidelines should at least speak to that unlikely event. The Board suggests that the following reference would address this unlikely event: "Although these guidelines address only the management of shortages in the pool of entitlements that are post-September 30, 1968 in priority, if hydrologic conditions worse than historically experienced occur, the Secretary may have to address the imposition of shortages on the pool of entitlements dating from 1929 to 1968. In such a situation, the Secretary shall follow the guidelines set forth in the 1964 Supreme Court Decree in Arizona v. California and also exercise such discretion as is provided in federal law, including the decree."

5. Protection of Senior Rights -- The Board believes that the interim shortage guidelines should be structured in a manner so as to give protection to senior entitlements as established in the 1968 Colorado River Basin Project Act and the 1964 Supreme Court decree. Accordingly, it is appropriate for the interim shortage guidelines to: 1) impose cut backs of water use by junior users based upon predetermined reservoir elevations so as to appropriately initiate the process of reducing junior uses in the face of what could be a long-term drought; 2) provide for additional staged reductions in the use of water by junior uses as the reservoir elevation drops; and 3) provide for the protection of storage in Lake Mead at appropriate elevations agreed to by the Lower Division states.

6. Appropriate Regard for the Intakes of the SNWA -- Although not a strict water right priority matter, the Board believes that the interim shortage guidelines should reflect the *practical reality* of the elevations of the intakes for the Southern Nevada Water Authority (SNWA). Because a significant urban population is largely dependent on the water supply made feasible by the SNWA intakes, development of the interim shortage guidelines should consider protection for elevations that will allow SNWA's intakes to function.

7. Address Shortages to Mexico -- An area of the law that has remained unclear is how a declared shortage will be applied to the Republic of Mexico. The Board feels strongly that the United States government must robustly protect the rights of users in the United States in accordance with the terms of the 1944 Mexican Water Treaty. The 1944 Mexican Water Treaty provides that in times of extraordinary drought Mexico will participate in cut backs that are in proportion to reductions in consumptive use imposed within the United States. Accordingly, the interim shortage guidelines should spell out for the public how this formula will be applied, how reductions in deliveries will take place, and the role of the IBWC and the State Department.

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8. Voluntary Forbearance Programs – As a result of the initiation of this process, several organizations have advanced the idea that the Secretary should embrace a program to pay for the voluntary fallowing of farmland so as to push off involuntary reductions in water usage in times of declared shortages. The Board believes that the interim shortage guidelines should *not* include or formally endorse programs that place involuntary taxes or user fees on water and power users. The Board will strongly resist any attempt to tax water and power users within the Lower Division states to fund such programs. Furthermore, the Board does not see any meaningful environmental benefits resulting from such a program given that interim guideline shortage cutbacks will occur at or above Lake Havasu and a significantly large volume of water will continue to flow to Imperial Dam. Furthermore, it would be inappropriate to add this kind of program, with its complexity and lack of wide support, to the foundational structure of the interim shortage guidelines.

Although, the Board objects to the inclusion of a Secretarial-sponsored voluntary forbearance program in the interim shortage guidelines that is based on taxing water and power users. The Board does recognize the value in allowing voluntary intra-state fallowing or other arrangements deemed necessary to mitigate impacts resulting from declared shortages or to be employed in advance of anticipated shortages.

B. Coordinated Management Strategies for the Operation of Lake Mead and Lake Powell:

1. Need for Modified Reservoir Operating Guidelines – In its initiation of this NEPA process, Reclamation has provided a *linkage* between the development of interim shortage guidelines and the development of coordinated reservoir operating guidelines. Although there may be other reasons to support such a linkage, the Board believes that one fundamental reason is that it will be functionally difficult to develop meaningful interim shortage guidelines unless the Secretary and the Basin states understand: 1) the volume of water that will be released from Lake Powell under various operating conditions, 2) the volume of 602(a) storage as determined pursuant to the 1968 Colorado River Basin Project Act, and how that volume, and the storage volume determined pursuant to the Interim 602(a) Storage Guideline, will be applied, 3) the magnitude of the anticipated depletions within the Basin during the term of the proposed interim coordinated management guidelines, and 4) lake levels in both Lake Powell and Lake Mead that need special consideration. Accordingly, if the Basin states and the Secretary are to be successful in developing much-needed interim shortage guidelines, the Board believes that it is essential for the Basin states and the Secretary to likewise succeed in developing modified reservoir operating guidelines that provide benefits to both the Upper and Lower Basins.

2. Avoid calls on the Upper Basin and Avoid Shortages in the Lower Basin – As indicated in past correspondence to the Secretary, the Basin states have articulated two overriding sideboard

Mr. Robert W. Johnson  
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factors in the development of new reservoir operating guidelines. First, any modification should help delay, in time, the likelihood of a Compact call on the Upper Division states. The Board recognizes the importance of this matter to the Upper Division states; and accordingly, the Board will work with the Basin states' representatives to find reservoir operating solutions that will postpone the likelihood of a Compact call. Second, the Board also appreciates the significant economic and other impacts from water use reductions resulting from declared shortages in the Lower Basin. Accordingly, the Board will also work with the Basin states' representatives to find solutions, in the form of modified reservoir operations that will delay the likelihood of, and reduce the magnitude of, declared shortages during the interim period. These two goals should be given emphasis by the Secretary in crafting modified reservoir operating guidelines.

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C. Operational Flexibility:

1. Recognition of Programs Providing Operational Flexibility -- In the discussions of development of interim shortage guidelines and coordinated management of Lakes Powell and Mead, the Basin states are considering programs and strategies to obtain additional operational flexibility and to reduce the likelihood and impacts of low runoff and reservoir conditions. These strategies include augmentation of the water supply of the Colorado River through various means, storing conserved water in Lake Mead, salvaging water currently lost to the System, and implementation of programs that will initially provide benefits to specific beneficiaries, but in the long-term provide benefits to the System. As appropriate, the NEPA process for development of interim shortage guidelines and coordinated management of Lakes Powell and Mead should recognize these operational programs that can benefit the system and reduce the impacts of low runoff and low reservoir conditions.

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Thank you for taking into consideration the comments of the Board with regard to this important process.

Sincerely,



Gerald R. Zimmerman  
Executive Director

Southern Nevada Water Authority

December 9, 2005

Mr. Robert Johnson, Regional Director  
U. S. Bureau of Reclamation  
Lower Colorado Region  
P.O. Box 61470  
Boulder City, NV 89006-1470

ATTN:BCOO-1000

Re: Request for Comments on Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions

Dear Mr. Johnson:

The State of Nevada and the Southern Nevada Water Authority (Authority) are writing in direct response to the Bureau of Reclamation's September 30, 2005 Federal Register notice of its intent to prepare an Environmental Impact Statement for the Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions. The September 30th notice, Secretary Norton's May 2, 2005 letter to the Governors of the seven Colorado River Basin States, and the August 25, 2005 letter to the Secretary from the Governor's representatives of the Basin States all underscore the urgent need for a comprehensive Colorado River management strategy that accommodates the immediate and long-term requirements of all the interests that are dependent on the Colorado River.

Timely resolution of Colorado River management issues is critical for Nevada. The Authority serves exclusively one of the most rapidly growing urban populations in the United States, but Nevada has the smallest state allocation of Colorado River water. We are also, unlike other Basin States, without in-state agriculture whose irrigation supplies can buffer shortages when they occur. While Nevada is aggressively developing additional in-state, non-Colorado River permanent supplies, these are long-term undertakings that involve significant environmental challenges and intersect difficult legal/policy/political issues.

Nevada would like to reiterate four points as part of the record for the September 30th request for comments. First, conjunctive management of Lakes Powell and Mead is imperative; it can benefit both basins and can forestall, or minimize, the effects of drought and shortages in the basin. Second, shortage criteria should recognize the effects that shortages could have for urban areas. Third, operating measures should consider the full range of reservoir operations, not just low reservoir conditions. Fourth, these operating measures must be adopted in a timely manner that would allow Nevada to benefit from augmentation of the Colorado River to bridge to the day Nevada will have developed additional permanent supplies. These operating measures should have no negative effect on any Colorado River interest and, more important, can benefit not just Nevada but also the entire Colorado River system.

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We look forward to working with Reclamation and the other Basin States to these ends, and are committed to pursuing the process and goals described in our August 25, 2005 letter.

Sincerely,  
Patricia Mulroy  
General Manager  
Southern Nevada Water Authority

Richard Bunker  
Chairman  
Colorado River Commission of Nevada

c: Larry Anderson, Utah  
Scott Balcomb, Colorado  
John D'Antonio, New Mexico  
Herb Guenther, Arizona  
Pat Tyrreil, Wyoming  
Jerry Zimmerman, California

**The States of Arizona, California, Colorado, Nevada,  
New Mexico, Utah and Wyoming  
Governor's Representatives on Colorado River Operations**

February 3, 2006

Honorable Gale A. Norton, Secretary  
Department of the Interior  
1849 C. Street, NW  
Washington, D.C. 20240

Re: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for the Operation of Lake Mead and Lake Powell Under Low Reservoir Conditions

Dear Secretary Norton:

The materials attached to this letter contain descriptions of the programs that the seven Colorado River Basin States suggest be included within the scope of the environmental impact statement (EIS) for the proposed *Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions* (70 Fed. Reg. 57322) (Sept. 30, 2005).

The Basin States, Bureau of Reclamation and others have consulted regularly since our previous correspondence on August 25, 2005 to further discuss and refine recommended management strategies for the Colorado River system. Subsequently, individual entities within the seven Basin States submitted oral and written comments to the Bureau of Reclamation on the above-referenced EIS process. Attachment A, "Seven Basin States' Preliminary Proposal Regarding Colorado River Interim Operations," is submitted as a consensus document on behalf of the seven Basin States. Please recognize that the States are still actively working on the matters addressed in this submission and anticipate further refinement.

Our recommendation is designed to provide input for the Department's consideration as it develops additional operational and water accounting procedures to: 1) delay the onset and minimize the extent and duration of shortages in the Lower Division States; 2) maximize the protection afforded the Upper Division States by storage in Lake Powell against possible curtailment of Upper Basin uses; 3) provide for more efficient, flexible, responsive and reliable operation of the system reservoirs for the benefit of both the Upper and Lower Basins by developing additional system water supplies through extraordinary conservation, system efficiency and augmentation projects; 4) allow the continued development and use of the Colorado River resource in both the Upper and Lower Basins; and 5) allow for development of dedicated water supplies through participation in improvements to system efficiency and clarification of how to proceed with development of non-system water reaching the Lower Basin

The Honorable Gale A. Norton

February 3, 2006

Page 2 of 3

mainstream. It is our position that implementation of these operational and accounting procedures can be accomplished without modification of the Long Range Operating Criteria or other elements of the law of the river. 2

The States' attached proposal incorporates an approach to shortage management. Additionally, the proposal includes modification and extension of the Department's Interim Surplus Guidelines to incorporate operations for all reservoir conditions.

The attached proposal also addresses the States' recommended approach to implementation of shortages pursuant to the U.S.-Mexico Treaty of 1944. We request that the Department of the Interior initiate, at the earliest appropriate time, consultation with the U.S. Section of the International Boundary and Water Commission and the U.S. Department of State on implementation of Treaty shortages. We further request the opportunity to consult with Interior and State Department officials on this issue as the federal government formulates its approach to any bi-national consultation with Mexico. 3

An agreement between Basin State water managers and users will be necessary to put in place additional terms upon which they have reached common understanding. We intend that this agreement be finalized while Reclamation is preparing the draft EIS, and be executed as soon as practicable. We are including with this letter a draft version of the agreement (Attachment B), to memorialize our current understandings and to provide you the benefits of our thoughts at this time. As with Attachment A, please recognize that the parties are still actively working on the matters addressed in Attachment B, and contemplate additional development and refinement of the agreement. We recognize that timely execution of our agreement is necessary in order to allow funding of certain efficiency projects to go forward.

During the time Reclamation is preparing the draft EIS, the States will move forward with a package of other actions that include implementation of a demonstration program for extraordinary conservation in 2006, system efficiency projects, preparation of an action plan for system augmentation through weather modification, execution of a memorandum of understanding for preparing a Lower Division States interstate drought management plan, development of forbearance agreements among the Lower Division States and the initiation of a study for long-term augmentation of Colorado River system water supplies. The States have already begun the consultant procurement process to support the long-term augmentation study, and intend to complete a weather modification action plan and a memorandum of understanding for interstate drought planning as soon as practicable. The Basin States recognize that Reclamation is undertaking NEPA compliance separately to determine whether to construct a regulating reservoir near Drop 2 of the All-American Canal and urge swift completion of that process. 4

We appreciate the opportunity you have provided for the Colorado River Basin States to recommend to you a program of reservoir management that considers all their respective concerns and interests. The Basin States look forward to working with you and Reclamation in analyzing and addressing these matters.

Sincerely,



Herb Guenther  
Director  
Arizona Department of Water Resources



Gerald R. Zimmerman  
Executive Director  
Colorado River Board of California



Scott Balcomb  
Governor's Representative  
State of Colorado



Rod Kuharich  
Director  
Colorado Water Conservation Board



Richard Bunker  
Chairman  
Colorado River Commission of Nevada



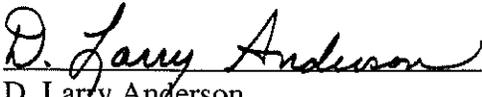
Patricia Mulroy  
General Manager  
Southern Nevada Water Authority



John R. D'Antonio, Jr.  
Governor's Representative  
State of New Mexico



Patrick Tyrrell  
State Engineer  
State of Wyoming



D. Larry Anderson  
Director  
Utah Division of Water Resources

List of Attachments:

Attachment A: Seven Basin States' Preliminary Proposal Regarding Colorado River Interim Operations

Attachment B: Draft Agreement

**ATTACHMENT A**  
**Seven Basin States' Preliminary Proposa Regarding Colorado River Interim Operations**

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The Seven Basin States (States) have worked together to recommend interim operations to the Secretary that should minimize shortages in the Lower Basin and avoid the risk of curtailment in the Upper Basin through conservation, more efficient reservoir operations, and long-term alternatives to bring additional water into the Colorado River community.

The States' recommendation has three key elements. First, the States propose to manage the reservoirs to minimize shortages and avoid curtailments. Second, the States have identified actions in the Lower Basin to conserve water. Third, the States recommend a specific proposal for implementing shortages in the Lower Basin. Finally, the States recognize the need for additional water supplies to meet the current and future needs in the Basin.

**Section 1. Allocation of Unused Basic Apportionment Water under Article II(B)(6)**

A. Introduction

Article II(B)(6) of the 1964 Decree in *Arizona v. California* (Decree) allows the Secretary to allocate water that is apportioned to one Lower Division State, but is for any reason unused in that State, to another Lower Division State. This determination is made for one year only and no rights to recurrent use of the water accrue to the State that receives the allocated water.

B. Application of Unused Basic Apportionment

Before making a determination of a surplus condition under this proposal, the Secretary will determine the quantity of apportioned but unused water under Article II (B)(6), and will allocate such water in the following order of priority.

1. Meet the direct delivery domestic use requirements of the Metropolitan Water District of Southern California, (MWD) and the Southern Nevada Water Authority (SNWA), as allocated between them by agreement.
2. Meet the needs of off stream banking activities by MWD in California and SNWA in Nevada, as allocated between them by agreement.
3. Meet the other needs for water in California in accordance with the California Seven-Party Agreement as supplemented by the Quantification Settlement Agreement.

**Section 2. Coordinated Operation of Lakes Powell and Mead**

Figure 1 describes the operating strategy that has been agreed to by the Colorado River Basin States.

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**ATTACHMENT A**  
**Seven Basin States' Preliminary Proposa Regarding Colorado River Interim Operations**

<b>Powell Elevation (feet)</b>	<b>Powell Operation</b>	<b>Powell Live Storage (maf)</b>
<b>3700</b>	Equalize or 8.23 maf	<b>24.32</b>
<b>3636 - 3664</b> (see table below)	8.23 maf; if Mead < 1075 feet, balance contents with a min/max release of 7.0 and 9.0 maf	<b>15.54- 19.02</b> (2008 - 2025)
<b>3575</b>	7.48 maf	<b>9.52</b>
<b>3525</b>	8.23 maf if Mead < 1025 f	<b>5.93</b>
<b>3370</b>	Balance contents with a min/max release of 7.0 and 9.5 maf	<b>0</b>

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Lake Powell Equalization Elevation Table

In each of the following years, the Lake Powell Equalization Elevation will be as follows:

Year	Elevation (feet)
2008	3636
2009	3639
2010	3642
2011	3643
2012	3645
2013	3646
2014	3648
2015	3649
2016	3651
2017	3652
2018	3654
2019	3655
2020	3657
2021	3659
2022	3660
2023	3662
2024	3663
2025	3664

**ATTACHMENT A**  
**Seven Basin States' Preliminary Proposa Regarding Colorado River Interim Operations**

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1. Equalization: In years when Lake Powell content is projected on January 1 to be at or above the elevation stated in the Lake Powell Equalization Elevation Table, an amount of water will be released from Lake Powell to Lake Mead at a rate greater than 8,230,000 acre-feet per year to the extent necessary to equalize storage in the two reservoirs, or otherwise to release 8,230,000 acre-feet from Lake Powell.
2. Upper Elevation Balancing: In years when Lake Powell content is projected on January 1 to be below the elevation stated in the Lake Powell Equalization Elevation Table and at or above 3575 ft., the Secretary shall release 8,230,000 acre-feet from Lake Powell if the projected elevation of Lake Mead is at or above 1075 ft. If the projected elevation of Lake Mead is below 1075 ft., the Secretary shall balance the contents of Lake Mead and Lake Powell, but shall release no more than 9,000,000 acre-feet and no less than 7,000,000 acre-feet from Lake Powell.
3. Mid-Elevation Releases: In years when Lake Powell content is projected on January 1 to be below 3575 ft. and at or above 3525 ft., the Secretary shall release 7,480,000 acre-feet from Lake Powell if the projected elevation of Lake Mead is at or above 1025 ft. If the projected elevation of Lake Mead is below 1025 ft., the Secretary shall release 8,230,000 acre-feet from Lake Powell.
4. Lower Elevation Balancing: In years when Lake Powell content is projected on January 1 to be below 3525 ft., the Secretary shall balance the contents of Lake Mead and Lake Powell, but shall release no more than 9,500,000 acre-feet and no less than 7,000,000 acre-feet from Lake Powell.

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Coordinated Operation of Lakes Powell and Mead as described herein will be presumed to be consistent with the Section 602(a) storage requirement contained in the Colorado River Basin Project Act.

The objective of the operation of Lakes Powell and Mead as described herein is to avoid curtailment of uses in the Upper Basin, minimize shortages in the Lower Basin and not adversely affect the yield for development available in the Upper Basin.

The August 24-month study projections for the January 1 system storage and reservoir water surface elevations, for the following year, would be used to determine the applicability of the coordinated operation of Lakes Powell and Mead.

**Section 3. Determination of Lake Mead Operation during the Interim Period**

- A. Interim Surplus Guidelines

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**ATTACHMENT A**  
**Seven Basin States' Preliminary Proposa Regarding Colorado River Interim Operations**

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1. The Basin States recommend that the Secretary continue to implement the Interim Surplus Guidelines (ISG) except as modified by this proposal, including the following:
  - a. Partial Domestic Surplus would be discontinued upon issuance of the Record Of Decision (“ROD”); and
  - b. The ISG effective period would be extended through December 31, 2025.
2. During the years 2017 through 2025 the Secretary shall distribute Domestic Surplus water:
  - a. For use by MWD, 250,000 acre-feet per year in addition to the amount of California’s basic apportionment available to MWD.
  - b. For use by SNWA, 100,000 acre-feet per year in addition to the amount of Nevada’s basic apportionment available to SNWA.
  - c. For use in Arizona, 100,000 acre-feet per year in addition to the amount of Arizona’s basic apportionment available to Arizona contractors.

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**B. Flood Control Surplus**

In years in which the Secretary makes space building or flood control releases pursuant to the Field Working Agreement, the Secretary shall determine a Flood Control Surplus for the remainder of that year or the subsequent year as specified in Section 7 of the ISG. In such years, releases will be made to satisfy all beneficial uses within the United States, including unlimited off-stream banking. Intentionally Created Surplus credits, as defined herein, would be reduced by the amount of any flood control release, if necessary until no credits are remaining. Under current practice, surplus declarations under the Treaty for Mexico are declared when flood control releases are made. Operation under a Flood Control Surplus does not establish any determination relating to implementation of the Treaty, including any potential changes in approach relating to surplus declarations under the Treaty. Such determinations must be addressed in a bilateral fashion with the Republic of Mexico.

**C. Quantified Surplus  
(70R Strategy)**

In years when the Secretary determines that water should be released for beneficial consumptive use to reduce the risk of potential reservoir spills based on the 70R Strategy, the Secretary shall determine and allocate Quantified Surplus sequentially as follows:

1. Establish the volume of the Quantified Surplus. For the purpose of determining the existence, and establishing the volume, of Quantified

**ATTACHMENT A**  
**Seven Basin States' Preliminary Proposa Regarding Colorado River Interim Operations**

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Surplus, the Secretary would not consider the volume of Intentionally Created Surplus credits, as defined herein.

2. Allocate and distribute the Quantified Surplus 50% to California, 46% to Arizona and 4% to Nevada, subject to 3. through 5. that follow.
3. Distribute California's share first to meet basic apportionment demands and MWD's demands. Then distribute to California Priorities 6 and 7 and other surplus contracts. Distribute Nevada's share first to meet basic apportionment demands and SNWA's demands. Distribute Arizona's share to surplus demands in Arizona including off stream banking and interstate banking demands. Arizona, California and Nevada agree that Nevada would get first priority for interstate banking in Arizona.
4. Distribute any unused share of the Quantified Surplus in accordance with Section 1, Allocation of Unused Basic Apportionment Water Under Article II (B)(6).
5. Determine whether MWD, SNWA and Arizona have received the amount of water they would have received under Section 3 D of this proposal, Domestic Surplus, if a Quantified Surplus had not been declared. If they have not, then determine and meet all demands provided for in Section 3 D, Domestic Surplus.

**D. Domestic Surplus**

In years when Lake Mead elevation is projected on January 1 to be above 1145 ft and below 70R Strategy elevation determination, the Secretary would determine a Domestic Surplus in accordance with Section 2(B)(2) of the ISG between the effective date of the ROD and December 31, 2016 and in accordance with Section 3(A) (2) of this proposal between January 1, 2017 and December 31, 2025.

**E. Normal Conditions**

In years when Lake Mead elevation is projected on January 1 to be above elevation 1075 ft. and below 1145 ft., the Secretary would determine a normal operating condition. In any year when Lake Mead elevations are in this range, the Secretary may determine that Intentionally Created Surplus ("ICS") as described in Section 4 of this proposal is available. ICS credits may then be delivered pursuant to the provisions of Section 4.

**F. Shortage Conditions**

Shortages would be implemented in the Lower Division States and Mexico under the following conditions and in the following manner:

1. 400,000 acre foot shortage: In years when Lake Mead content is projected on January 1 to be at or below elevation 1075 ft. and at or above 1050 ft.,

**ATTACHMENT A**  
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a quantity of 400,000 acre-feet shall not be released or delivered in the Lower Division States and Mexico.

2. 500,000 acre foot shortage: In years when Lake Mead content is projected on January 1 to be below elevation 1050 ft. and at or above 1025 ft. a quantity of 500,000 acre-feet shall not be released or delivered in the Lower Division States and Mexico.
3. 600,000 acre foot shortage: In years when Lake Mead content is projected on January 1 to be below 1025 ft., a quantity of 600,000 acre-feet shall not be released or delivered in the Lower Division States and Mexico.
4. The three conditions described above are illustrated in Figure 2.

Figure 2

Lake Mead Step Shortage		
Mead Elevation (ft)	Stepped Shortage	Mead Live Storage
1075 to 1050	400 kaf	9.37 to 7.47 maf
<1050 to 1025	500 kaf	7.47 to 5.80 maf
<1025 to 1000	600 kaf	5.80 to 4.33 maf
<1000	Increased reductions to be consistent with consultation(s)	<4.33 maf

5. The United States, through the appropriate mechanisms, should implement a shortage pursuant to Article 10 of the 1944 Treaty in any year in which the Secretary has declared that a shortage condition exists pursuant to Art. II(B)(3) of the Decree. The total quantity of water that will not be released or delivered to Mexico shall be based on Lower Basin water deliveries during normal water supply conditions. The proportion of the shortage that shall be borne by Mexico will be 17% ( $1.5 \text{ maf} / 9 \text{ maf} \times 100\% = 17\%$ ).
6. Arizona and Nevada will share shortages based on a shortage sharing agreement. In the event that no agreement has been reached, Arizona and Nevada will share shortages in accordance with the 1968 Colorado River Basin Project Act, the Decree, other existing law as applicable, and the Interstate Banking Agreement between Arizona and Nevada parties.
7. Whenever Lake Mead reaches elevation 1025 ft., the Secretary will consult with the States to determine whether Colorado River hydrologic conditions, together with the delivery of 8.4 million acre-feet of Colorado River water to Lower Basin users and Mexico, will cause the elevation of Lake Mead to fall below 1000 ft. Upon such a determination, the

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Secretary shall consult with the states to discuss further measures that may be undertaken to avoid or reduce further increases in shortage determinations. If increased reductions are required, the Secretary shall implement the reductions consistent with the law of the river.

8. The States will evaluate factors at critical elevations that may avoid shortage determinations as reservoir elevations approach critical thresholds. The States may provide operational recommendations surrounding the critical elevations at some later date.

**Section 4. System Efficiency, Extraordinary Conservation and Augmentation Projects**

The States propose that the Secretary develop a policy and accounting procedure concerning augmentation, extraordinary conservation, and system efficiency projects, including specific extraordinary conservation projects, tributary conservation projects, introduction of non-Colorado River System water, system efficiency improvements and exchange of non-Colorado River System water. The accounting and recovery process would be referred to as “Intentionally Created Surplus” consistent with the concept that the States will take actions to augment storage of water in the Lower Colorado River Basin. The water would be distributed pursuant to Section II(B)(2) of the Decree and forbearance agreements between the States. The ICS credits may not be created or released without such forbearance agreements.

- A. The purposes of the Lake Mead Intentionally Created Surplus (“ICS”) program are to:
  1. Help avoid shortages to the Lower Basin. For the purposes of determining calendar year declarations of Domestic Surplus, Normal and Shortage conditions, any ICS credits would be considered system water;
  2. Benefit both Lake Mead and Lake Powell; and
  3. Increase the surface elevations of both Lakes Powell and Mead to higher levels than would have otherwise occurred.
- B. Extraordinary Conservation Storage Credits
  1. Users of Colorado River water may create ICS credits through extraordinary conservation under the following conditions:
    - a. A Boulder Canyon Project Act Section 5 Contractor (“Contractor”) shall repay all outstanding system payback obligations before it can create ICS credits.
    - b. ICS credits can only be created if such water could have otherwise been beneficially used.

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- c. A Contractor notifies Reclamation by September 15 of the amount of ICS credits it wishes to create for the subsequent year.
2. ICS credits may be created only through extraordinary conservation activities. These activities include:
  - a. Fallowing of land that currently is, historically was, and otherwise would have been in the next year, irrigated.
  - b. Canal lining programs
  - c. Desalination programs
  - d. Extraordinary conservation programs existing as of January 1, 2006
  - e. Other extraordinary conservation measures as agreed upon by the States
3. If conditions during the year change due to weather or other unforeseen circumstances, a Contractor may request a mid-year modification of its water order to reduce the amount of ICS credits created during that year. A Contractor cannot increase the amount of ICS credits it had previously scheduled to create during the year.
4. Any ICS credits would be used first to offset any overrun for that year or future year(s).
5. The maximum amount of ICS credits that can be created during any year through extraordinary conservation is limited to each state as listed below.
  - a. California: 400,000 acre-feet per year
  - b. Nevada: 125,000 acre-feet per year
  - c. Arizona: 100,000 acre-feet per year
6. The maximum cumulative amount of ICS credits created through extraordinary conservation that would be available at any one time is:
  - a. 1,500,000 acre-feet for California;
  - b. 300,000 acre-feet for Nevada; and
  - c. 300,000 acre-feet for Arizona.
7. No category of surplus water can be used to create ICS credits.

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8. At the time the ICS credits are created by extraordinary conservation, the Contractor will dedicate 5% of the ICS credits to the system on a one-time basis to provide a water supply benefit to the system. Additionally, ICS credits will be subject to annual evaporation loss (estimated to be no more than 3% annually) during each year in which no shortage has been declared. The Secretary will not assess any other charge for creating ICS credits.
9. Contractors that have created ICS credits may recover them under the following conditions:
  - a. A Contractor may request delivery of ICS credits it has created at the time it submits its annual water order for the following year. The ICS credits would be added to the Contractor's approved water order for that year upon approval by Reclamation.
  - b. The amount of ICS credits that may be recovered by California in any one year is limited to 400,000 acre-feet, by Nevada 300,000 acre-feet and Arizona 300,000 acre-feet; provided that the May 1, 24-month study for that year does not indicate that a shortage condition would be declared in the current or succeeding year.
  - c. If extraordinary weather conditions or water emergencies occur, a Contractor may request that Reclamation increase its use of ICS credits for that year.
  - d. A Contractor may request to reduce its use of ICS credits during the year for any reason, including reduction in water demands.
  - e. If Reclamation releases water for flood control purposes, ICS credits shall be reduced on a pro-rata basis among all holders of ICS credits-- if necessary until no credits remain. In determining the amount of Quantified Surplus, Reclamation shall not consider the volume of ICS credits that will be available.
10. Contractors may begin to create ICS through extraordinary conservation 1) beginning in 2006 as a pilot program (which may be lost if the Secretary does not adopt an extraordinary conservation program as part of the Coordinated Operation of Lakes Powell and Mead) or 2) after adoption of the Coordinated Operation for Lakes Powell and Mead until 2025. Any ICS credits under this program remaining at the end of the program would remain available for recovery for up to 10 years following termination of the Program.

**C. Tributary Conservation**

The Secretary should develop procedures in consultation with the States that would permit Contractors to purchase and fallow annual or permanent water rights on tributaries

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within the Lower Division States that have been used for a significant period of years and were created prior to Congress' adoption of the Boulder Canyon Project Act that, when retired, and verified by the Secretary, contribute water to the Colorado River mainstream for diversion by the Contractor. The water recovered by the Contractor may be used for municipal and industrial purposes only. This water would be in addition to the State's basic apportionment and would be available during declared shortages.

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It is intended that the water would be taken on a real-time basis and that not more than 95% of such water will be recovered; however, if storage were required, such stored water would be subject to all provisions applicable to ICS credits created through extraordinary conservation.

**D. System Efficiency Projects**

A Contractor may make contributions of capital to the Secretary for use in Secretarial projects designed to realize efficiencies that save water that would otherwise be lost from the Colorado River System in the United States. The Secretary in consultation with the States will identify system efficiency projects, terms for capital participation in such projects, and types and amounts of benefits the Secretary would provide in consideration of non-federal capital contributions to system efficiency projects, including a portion of the water saved by the project. Water made available to Contractors by the Secretary would be considered Intentionally Created Surplus. System efficiency projects are only intended to provide temporary water supplies and would not be available for permanent use.

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Benefits to the total water available within the Colorado River System in the United States should be substantial, taking into account any benefit provided to any non-federal capital contributor. In those cases in which benefits are provided to a non-federal capital contributor in the form of a portion of the water saved by the system efficiency project, the water provided to the capital contributor should be characterized as Colorado River surplus water intentionally created by the system efficiency project. The ICS credits should be provided to the capital contributor pursuant to its BCPA § 5 surplus contract. The Secretary should first obtain the waiver or forbearance of any other BCPA § 5 surplus contractor(s) that may possess any right to the delivery of the same water, so that the Secretary may deliver it to the capital contributor pursuant to Article II (B)(6) of the Decree. The ICS credits should be provided to the capital contributor on a predetermined schedule of annual deliveries for a period of years as agreed by the Secretary and Contractor. The ICS credits would not be stored, and therefore would not spill from system reservoirs. Delivery of ICS credits during shortage conditions will be determined on a project-by-project basis.

**E. Introduction and Recovery of Non-Colorado River System Water**

The Secretary should develop procedures, in consultation with the States, that would prospectively allow non-Colorado River System water in a Lower Division State to be introduced into, conveyed through, and diverted from system reservoirs, or otherwise through the Colorado River System. The non-Colorado River System water may be

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introduced either (1) directly from the non-Colorado River System source, or (2) as effluent resulting from use of the non-Colorado River System water in the introducing entity's service area, assuming water quality concerns are adequately addressed by the Contractor introducing the water. This water is in addition to a state's basic apportionment and may be used during declared shortages.

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Contractors proposing to introduce, convey and recover such non-Colorado River System water should make sufficient arrangements, contractual or otherwise, with the Secretary so as to guarantee that any such action causes no harm to the Secretary's management of the Colorado River System. Such arrangements would provide that the introduction, conveyance and recovery of such water be done pursuant to appropriate permits or other authorizations as required by state law, that the actual amount of water introduced, conveyed and recovered would be reported to the Secretary on an annual basis, and that no more than 95% of such water introduced will be recovered. The non-Colorado River System water would be intended to be taken on a real-time basis, and hence would not spill from system reservoirs. However, if storage were required such stored water would be subject to all provisions applicable to ICS created through extraordinary conservation. Any agreements made with the Secretary to introduce and recover this water will survive the termination of the Coordinated Operations of Lakes Powell and Mead.

Weather modification projects should be pursued as a means of augmenting Colorado River System water supplies. However, increases in water supply that result from weather modification projects are not included within the projects defined in this Section and would not create any additional supply for a Contractor or State that engages in a weather modification project.

**Section 5. Non-Colorado River System Water Exchanges**

Contractors in Arizona, California, or Nevada may secure an additional water supply by funding the development of a non-Colorado River System water supply in one Lower Division State for use in another State by exchange. The new water supply developed would be consumptively used in the State in which it was developed by a Contractor and that Contractor would intentionally reduce its consumptive use of Colorado River water. This would allow the Contractor(s) in the other Lower Division State(s) that provided the funding to consumptively use the Colorado River water that was intentionally unused through an agreement with the Secretary of the Interior. Through the cooperation of the International Boundary and Water Commission, United States and Mexico, similar agreements could be established by which non-Colorado River System water supplies in Mexico could be developed for use in the United States by exchange.

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It could be necessary for a State or other lower priority Contractors in the State in which consumptive use was intentionally reduced to agree to forebear their use of such water depending on the then-existing priority system to use of Colorado River water, to avoid a claim against the water being delivered to the Contractor that funded the new water supply. As an alternative to forbearance, an offer by the Contractor developing the non-Colorado River System water to allow the lower priority Contractor to pay the cost of developing a portion or all of the non-

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Colorado River System water supplies to be developed, would be utilized to protect such a lower priority Contractor's position in the then-existing priority system. A refusal of an offer to pay the cost of developing a portion or all of the non-Colorado River System water supplies to be developed would constitute the lower-priority Contractor's waiver of a right to challenge the exchange.

**Section 6. Accounting Mechanisms**

The operating alternatives discussed in Sections 4 and 5 will require new or modified Colorado River accounting mechanisms. No specific accounting mechanism to allow these types of operations is proposed for evaluation in Reclamation's current NEPA process. However, the description and evaluation of such accounting mechanisms would provide Contractors with the assurance that if such accounting mechanism were adopted in the Record of Decision, funds spent to propose such an arrangement in the future would not be spent in vain.

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**Section 7. Effective Period**

The proposed interim operations will be in effect 30 days from the publication of the Secretary's Record of Decision in the Federal Register. The proposed interim operations will, unless subsequently modified, remain in effect through December 31, 2025 (through preparation of the 2026 AOP), subject to a formal review of their effectiveness beginning no later than 2020.

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**AGREEMENT**

The [name parties] hereby enter into this Agreement effective as of \_\_\_\_\_.

**RECITALS****A. Parties.****1. Arizona**

- a. The Arizona Department of Water Resources, through its Director, is the successor to the signatory agency of the State for the 1922 Colorado River Compact, and the 1944 Contract for Delivery of Water with the United States, both authorized and ratified by the Arizona Legislature, A.R.S. §§ 45-1301 and 1311. Pursuant to A.R.S. §§ 45-107, the Director is authorized and directed, subject to the limitations in A.R.S. §§ 45-106, for and on behalf of the State of Arizona, to consult, advise and cooperate with the Secretary of the Interior of the United States with respect to the exercise by the Secretary of Congressionally authorized authority relative to the waters of the Colorado River (including but not limited to the Boulder Canyon Project Act, 43 U.S.C. § 617, and the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1501) and with respect to the development, negotiation and execution of interstate agreements. Additionally, under A.R.S. § 45-105(A)(9), the Director is authorized to "prosecute and defend all rights, claims and privileges of this state respecting interstate streams."
- b. Under A.R.S. § 11-951 *et. seq.*, the Director is authorized to enter into Intergovernmental Agreements with other public agencies, which includes another state; departments, agencies, boards and commissions of another state; and political subdivisions of another state.

2. California. The chairman of the Colorado River Board of California, acting as the Colorado River Commissioner pursuant to California Water Code section 12525, has the authority to exercise on behalf of California every right and power granted to California by the Boulder Canyon Project Act, and to do and perform all other things necessary or expedient to carry out the purposes of the Colorado River Board.

**3. Colorado**

- a. Section 24-1-109, Colorado Revised Statutes (2005) provides that "Interstate compacts authorized by law shall be administered under the direction of the office of the governor." This includes the Colorado River Compact and the Upper Colorado River Basin Compact. Section 37-60-109 provides that "the governor from time to time, with approval of the

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board, shall appoint a commissioner, who shall represent the state of Colorado upon joint commissions to be composed of commissioners representing the state of Colorado and another state or other states for the purpose of negotiating and entering into compacts or agreements between said states..." By Executive Order \_\_\_\_\_, issued \_\_\_\_\_, 2006, attached hereto as Exhibit \_\_\_\_\_ and incorporated herein by reference, the Governor appointed Upper Colorado River Commissioner Scott Balcomb to represent the State of Colorado.

- b. Section 37-60-106, subsections (e) and (i), C.R.S. (2005), authorize the Colorado Water Conservation Board to "cooperate with the United States and the agencies thereof, and with other states for the purpose of bringing about the greater utilization of the water of the state of Colorado and the prevention of flood damages," and "to confer with and appear before the officers, representatives, boards, bureaus, committees, commissions, or other agencies of other states, or of the federal government, for the purpose of protecting and asserting the authority, interests, and rights of the state of Colorado and its citizens with respect to the waters of the interstate streams in this state." By resolution dated \_\_\_\_\_, attached hereto as Exhibit \_\_\_, and incorporated herein by reference, the Colorado Water Conservation Board authorized and directed its Director to negotiate with and enter into agreements with other state entities within the Colorado River Basin.

#### 4. Nevada

- a. The Colorado River Commission of the State of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is authorized by N.R.S. § 538.161 (6), (7) to enter into this Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to supplement the supply of water in the Colorado River which is available for use in Nevada, augment the waters of the Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary of the Interior of the United States. The Chairman of the Commission, signatory hereto, serves as one of the Governor's representatives as contemplated by Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b) and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act.
- b. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994 and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Agreement and, pursuant

to its contract issued under section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert “supplemental water” as defined by NRS § 538.041 (6). The General Manager of the SNWA, signatory hereto, serves as one of the Governor’s Representatives as contemplated by Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b) and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act.

5. New Mexico. Pursuant to NMSA 1978, 72-14-3, the New Mexico Interstate Stream Commission is authorized to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of the State of New Mexico, interstate or otherwise. The Interstate Stream Commission also is authorized to institute or cause to be instituted in the name of the state of New Mexico any and all negotiations and/or legal proceedings as in its judgment are necessary. By Resolution dated \_\_\_\_\_, the Interstate Stream Commission authorizes the execution of this Agreement.
6. Utah. The Division of Water Resources (DWR) is the water resource authority for the State of Utah. Utah Code Ann. § 73-10-18. The Utah Department of Natural Resources Executive Director (Department), with the concurrence of the Utah Board of Water Resources (Board), appoints the DWR Director (Director). § 63-34-6(1). The Board makes DWR policy. § 73-10-1.5. The Board develops, conserves, protects, and controls Utah waters, § 73-10-4(4),(5), and, in cooperation with the Department and Governor, supervises administration of interstate compacts, § 73-10-4, such as the Colorado River Compact, §§ 73-12a-1 through 3, and the Upper Colorado River Basin Compact, § 73-13-10. The Board, with Department and Gubernatorial approval, appoints a Utah Interstate Stream Commissioner, § 73-10-3, currently the DWR Director, to represent Utah in interstate conferences to administer interstate compacts. §§ 73-10-3 and 73-10-4. These delegations of authority authorize the Utah Interstate Stream Commissioner/DWR Director to sign this document. He acts pursuant to a Board resolution, acknowledged by the Department, dated \_\_\_\_\_, attached hereto as Exhibit \_\_, and incorporated herein by reference.
7. Wyoming. Water in Wyoming belongs to the state. WYO. CONST. Art. 8 ' 1. The Wyoming State Engineer is a constitutionally created office and is Wyoming’s chief water official with general supervisory authority over the waters of the state. WYO. CONST. Art. 8 ' 5. The Wyoming legislature conferred upon Wyoming officers the authority to cooperate with and assist like authorities and entities of other states in the performance of any lawful power, duty, or authority. WYO. STAT. ANN. ' 16-1-101 (LEXISNEXIS 2005). Wyoming and its State Engineer represent the rights and interests of all Wyoming appropriators with respect to other states. *Wyoming v. Colorado*,

286 U.S. 494 (1922). See *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938). In signing this Agreement, the State Engineer intends that this Agreement be mutually and equally binding between the Parties.

## B. Background

1. Federal law and practice (including Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b), and the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act), contemplate that in the operation of Lakes Powell and Mead, the Secretary of the Interior consults with the States through Governors' Representatives, who represent the Governors and their respective States. Through this law and practice, the Governors' Representatives have in the past reached agreements among themselves and with the Secretary on various aspects of Colorado River reservoir operation. This Agreement is entered into in furtherance of this law and practice.

2. On January 16, 2001, the Secretary adopted Colorado River Interim Surplus Guidelines (ISG) based on an alternative prepared by the Colorado River Basin States, for the purposes of determining annually the conditions under which the Secretary would declare the availability of surplus water for use within the states of Arizona, California and Nevada in accordance with and under the authority of the Boulder Canyon Project Act of 1928 (45 Stat. 1057) and the Decree of the United States Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964). The ISG are effective through calendar year 2015 (through preparation of the 2016 Annual Operating Plan).

3. In the years following the adoption of the ISG, drought conditions in the Colorado River Basin caused a significant reduction in storage levels in Lakes Powell and Mead, and precipitated discussions by and among the Parties, and between the Parties and the United States through the Department of the Interior and the Bureau of Reclamation. The Parties recognize that the Upper Division States have not yet developed their full apportionment under the Colorado River Compact. Although the Secretary has not imposed any shortage in the Lower Basin, the Parties also recognize that with additional Upper Basin development and in drought conditions, the Lower Division States may be required to suffer shortages in deliveries of water from Lake Mead. Therefore, these discussions focused on ways to improve the management of water in Lakes Powell and Mead so as to enhance the protection afforded to the Upper Basin by Lake Powell, and to delay the onset and minimize the extent and duration of shortages in the Lower Basin.

4. Shortages in the Lower Basin will also trigger shortages in the delivery of water to Mexico pursuant to the Mexican Water Treaty of 1944, February 3, 1944, U.S.-Mex., 59 Stat. 1219, T.S. 994, 3 U.N.T.S. 313.

5. On May 2, 2005, the Secretary announced her intent to undertake a process to develop Lower Basin shortage guidelines and explore management options for the coordinated operation of Lakes Powell and Mead. On June 15, 2005, the Bureau of Reclamation published a notice in the *Federal Register*, announcing its intent to implement the Secretary's direction. The Bureau of Reclamation has proceeded to undertake scoping and develop alternatives pursuant to the National Environmental Policy Act (the NEPA Process), which the Parties anticipate will form the basis for a ROD to be issued by the Secretary by December 2007.

6. On August 25, 2005, the Governors' Representatives for the seven Colorado River Basin States wrote a letter to the Secretary expressing conceptual agreement in the development and implementation of three broad strategies for improved management and operation of the Colorado River: Coordinated Reservoir Management and Lower Basin Shortage Guidelines; System Efficiency and Management; and Augmentation of Supply.

7. On February 3, 2006, the Governors' Representatives transmitted to the Secretary their recommendation for the scope of the NEPA Process, which refined many of the elements outlined in the August 25, 2005 letter.

8. At the request of the Secretary, the Parties have continued their discussions relative to the areas of agreement outlined in the letters of August 25, 2005 and February 3, 2006.

9. In furtherance of the letters of August 25, 2005 and February 3, 2006, the Parties have reached agreement to take additional actions for their mutual benefit, which are designed to augment the supply of water available for use in the Colorado River System and improve the management of water in the Colorado River.

C. Purpose. The Parties intend that the actions by them contemplated in this Agreement will: improve cooperation and communication among them; provide additional security and certainty in the water supply of the Colorado River System for the benefit of the people served by water from the Colorado River System; and avoid circumstances which could otherwise form the basis for claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the law of the river.

## AGREEMENT

In consideration of the above recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals set forth above are material facts that are relevant to and form the basis for the agreements set forth herein.

2. Definitions. As used in this Agreement, the following terms have the following meanings:

- A. Colorado River System. This term shall have the meaning as defined in the Colorado River Compact.
- B. ISG. The Colorado River Interim Surplus Guidelines adopted by the Secretary on January 16, 2001.
- C. NEPA Process. The decision-making process pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 through 47, beginning with the Bureau of Reclamation's Notice to Solicit Comments and Hold Public Meetings, 70 Fed. Reg. 34794 (June 15, 2005) and culminating in a Record of Decision.
- D. Party or Parties. Any party or parties to this Agreement.
- E. Parties' Recommendation. The Seven Basin States' Preliminary Proposal Regarding Colorado River Interim Operations, a copy of which is attached hereto and incorporated herein by this reference, presented by the Parties to the Secretary in furtherance of the States' letters of August 25, 2005 and February 3, 2006, and any modification of the Parties' Recommendation adopted by the Parties pursuant to this Agreement.
- F. ROD. The Record of Decision anticipated to be issued by the Secretary after completion of NEPA Process, pursuant to her letter of May 2, 2005, and the Notice published in the Federal Register on September 30, 2005, 70 Fed. Reg. 57322.
- G. Secretary. The Secretary of the Interior or the Bureau of Reclamation, as applicable.
- H. State or States. Any of the states of Arizona, California, Colorado, Nevada, New Mexico, Utah or Wyoming, as context requires.

3. Support for Parties' Recommendation. After considering a number of alternatives, each Party has determined that the Parties' Recommendation is in the best interests of that Party, and promotes the health and welfare of that Party and of the Colorado River Basin States. In the NEPA Process, the Parties shall support the Secretary's adoption of the Parties' Recommendation in a ROD. If during the course of the NEPA Process any new information becomes available which causes any Party, in its sole and absolute discretion, to reassess any provision of the Parties' Recommendation, that Party shall immediately notify all other Parties in writing. The Parties shall jointly confer and, if they agree to any modification of the Parties' Recommendation, shall consult with the Secretary to advise her of such modification and request the adoption thereof in the ROD. If after such conference and consultation it is apparent there is an

irreconcilable conflict between the Parties as to such modification, then any Party may upon written notice to the other Parties withdraw from this Agreement, and in such event this Agreement shall no longer be effective or binding upon such withdrawing Party. All withdrawing Parties hereby reserve all rights upon withdrawal from this Agreement to take such actions, including support of or challenges to the ROD, as they in their sole and absolute discretion deem necessary or appropriate. In the event of the withdrawal of any one or more Parties from this Agreement, this Agreement shall continue in full force and effect as to the remaining Parties. The remaining Parties may confer to determine whether to continue this Agreement in effect, to amend this Agreement, or to terminate this Agreement. In the event of termination, all Parties shall be relieved from the terms hereof, and this Agreement shall be of no further force or effect.

4. ROD Consistent with the Parties' Recommendation. In the event the Secretary adopts a ROD in substantial conformance with the Parties' Recommendation, the Parties shall take all necessary actions to implement the terms of the ROD, including the approval and execution of agreements necessary for such implementation.

5. ROD Inconsistent with the Parties' Recommendation. In the event the Secretary adopts a ROD that any Party, in its sole and absolute discretion, determines is not in substantial conformance with the Parties' Recommendation, such Party shall immediately notify all other Parties of such determination in writing. The Parties shall jointly confer, and consult with the Secretary as necessary, in order to determine whether the ROD is in substantial conformance with this Agreement, or whether any action, including the amendment of this Agreement, may resolve such concern. If after such conference and consultation it is apparent there is an irreconcilable conflict between the ROD and the concerns of such Party, then such Party may upon written notice to the other Parties withdraw from this Agreement, and in such event this Agreement shall no longer be effective or binding upon such withdrawing Party. All withdrawing Parties hereby reserve all rights upon withdrawal from this Agreement to take such actions, including support of or challenges to the ROD, as they in their sole and absolute discretion deem necessary or appropriate. In the event of the withdrawal of any one or more Parties from this Agreement, this Agreement shall continue in full force and effect as to the remaining Parties. The remaining Parties may confer to determine whether to continue this Agreement in effect, to amend this Agreement, or to terminate this Agreement. In the event of termination, all Parties shall be relieved from the terms hereof, and this Agreement shall be of no further force or effect.

6. Additions to the ROD. The Parties hereby request that the Secretary recognize the specific provisions of this Agreement as part of the NEPA Process and, if appropriate, include in the ROD specific provisions that reference this Agreement as a basis for the ROD. The Parties also hereby request that the Secretary include in the ROD specific provision that the Secretary will first consult with all the States, through their designated Governor's Representatives, before making any substantive modification to the ROD. Finally, the Parties hereby request that the Secretary include in the ROD specific provision that upon a request by any State for modification of the ROD, or upon any request by any State to resolve any claim or controversy arising under this Agreement or

under the operations of Lakes Powell and Mead pursuant to the ROD, the ISG, or any other applicable provision of federal law, regulation, criteria, policy, rule or guideline, the Secretary shall invite all of the Governors, or their designated representatives, to consult with the Secretary in an attempt to resolve such claim or controversy by mutual agreement.

7. Consultation on Operations. After the Secretary commences operating Lakes Powell and Mead pursuant to the ROD, the Parties shall confer among themselves as necessary, but at least annually, to assess such operations. Any Party may request consultation with the other Parties on a proposed adjustment or modification of such operations, based on changed circumstances, unanticipated conditions, or other factors. Upon such request, the Parties shall in good faith confer to resolve any such issues, and based thereon may request consultation by the States with the Secretary on adjustments to or modifications of operations under the ROD. In any event, the Parties shall confer before December 31, 2020, to determine whether to extend this Agreement and recommend that the Secretary continue operations under the ROD for an additional period, or modify this Agreement and recommend that the Secretary modify operations under the ROD, or terminate this Agreement and recommend that the Secretary not continue operations under the ROD after the expiration thereof.

8. Development of System Augmentation. The Parties agree to diligently pursue system augmentation within the Colorado River System including but not limited to the determination of the feasibility of projects to increase precipitation in the basin or to augment available supplies through desalination. Additionally, the Parties agree to cooperatively pursue an interim water supply of at least a cumulative amount of 280,000 acre-feet for use in Nevada while long-term augmentation projects are being pursued. It is anticipated that this interim water supply will be made available in return for Nevada's funding of the Drop 2 Reservoir currently proposed for construction by the Bureau of Reclamation. Annual recovery of this interim water supply by Nevada will not exceed 40,000 acre-feet. All water available to Nevada in consideration for funding the Drop 2 Reservoir would remain available during all shortage conditions declared by the Secretary.

In consideration of the Parties' diligent pursuit of long-term augmentation and the availability of the interim water supply, the Southern Nevada Water Authority (SNWA) agrees that it will withdraw right-of-way Application No. N-79203 filed with the Bureau of Land Management on October 1, 2004 for the purpose of developing Permit No. 58591 issued by the Nevada State Engineer in Ruling No. 4151.

The SNWA will not re-file such right-of-way application or otherwise seek to divert the water rights available under Permit No. 58591 from the Virgin River prior to 2014 so long as Nevada is allowed to utilize its pre-Boulder Canyon Project Act Virgin and Muddy River rights in accordance with section 4(C) of the Parties' Recommendation in the form forwarded to the Secretary on February 3, 2006, and the interim water supply made available to Nevada is reasonably certain to remain available. The SNWA will not re-file such right-of-way application or otherwise seek to divert the water rights available

under Permit No. 58591 from the Virgin River after 2014 so long as diligent pursuit of system augmentation is proceeding to provide Nevada an annual supply of 75,000 acre-feet by the year 2020. Prior to re-filing any applications with the Bureau of Land Management, SNWA and Nevada will consult with the other Basin States.

This agreement is without prejudice to any Party's claims, rights or interests in the Virgin or Muddy River systems.

9. Consistency with Existing Law. The Parties' Recommendation is consistent with existing law. The Parties expressly agree that the storage of water in and release of water from Lakes Powell and Mead pursuant to a ROD issued by the Secretary in substantial conformance with the Parties' Recommendation and this Agreement, and any agreements, rules and regulations adopted by the Secretary or the parties to implement such ROD, shall not constitute a violation of Article III(a)-(e) inclusive of the Colorado River Compact, or Sections 601 and 602(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. §§ 1551 and 1552(a)), and all applicable rules and regulations promulgated thereunder.

10. Resolution of Claims or Controversies. The Parties recognize that litigation is not the preferred alternative to the resolution of claims or controversies concerning the law of the river. In furtherance of this Agreement, the Parties desire to avoid litigation, and agree to pursue a consultative approach to the resolution of any claim or controversy. In the event that any Party becomes concerned that there may be a claim or controversy under this Agreement, the ROD, Article III(a)-(e) inclusive of the Colorado River Compact, or Sections 601 and 602(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. §§ 1551 and 1552(a)), and all applicable rules and regulations promulgated thereunder, such Party shall notify all other Parties in writing, and the Parties shall in good faith meet in order to resolve such claim or controversy by mutual agreement prior to any litigation. No Party shall initiate any judicial or administrative proceeding against any other Party or against the Secretary under Article III(a)-(e) inclusive of the Colorado River Compact, or Sections 601 and 602(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. §§ 1551 and 1552(a)), or any other applicable provision of federal law, regulation, criteria, policy, rule or guideline, and no claim thereunder shall be ripe, until such conference has been completed. In addition, all States shall comply with any request by the Secretary for consultation in order to resolve any claim or controversy. In addition, any State may invoke the provisions of Article VI of the Colorado River Compact. Notwithstanding anything in this Agreement to the contrary, the terms of this Paragraph 10 shall survive for a period of five years following the termination or expiration of this Agreement, and shall apply to any withdrawing Party after withdrawal for such period.

11. Reservation of Rights. Notwithstanding the terms of this Agreement and the Parties' Recommendation, in the event that for any reason this Agreement is terminated, or that the term of this Agreement is not extended, or upon the withdrawal of any Party from this Agreement, the Parties reserve, and shall not be deemed to have waived, any and all rights, including any claims or defenses, they may have as of the date hereof or as

may accrue during the term hereof, under any existing federal or state law or administrative rule, regulation or guideline, including without limitation the Colorado River Compact, the Upper Colorado River Basin Compact, the Decree in *Arizona v. California*, the Colorado River Basin Project Act of 1968, and any other applicable provision of federal law, rule, regulation, or guideline.

12. No Third-Party Beneficiaries. This Agreement is made for the benefit of the Parties. No Party to this Agreement intends for this Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise.

13. Joint Defense Against Third Party Claims. In the event the Secretary adopts a ROD in substantial conformance with the Parties' Recommendation as set forth herein, they will have certain common, closely parallel, or identical interests in supporting, preserving and defending the ROD and this Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation and defense of the ROD and this Agreement, as well as from a coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party as to the ROD or this Agreement (including claims by any withdrawing Party), the Parties will cooperate to proceed with reasonable diligence and to use reasonable best efforts in the support, preservation and defense thereof, including any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of the ROD or this Agreement, and will to the extent appropriate enter into such agreements, including joint defense or common interest agreements, as are necessary therefor. Each Party shall bear its own costs of participation and representation in any such defense.

14. Reaffirmation of Existing Law. Nothing in this Agreement or the Parties' Recommendation is intended to, nor shall this Agreement be construed so as to, diminish or modify the right of any Party under existing law, including without limitation the Colorado River Compact, the Upper Colorado River Basin Compact, or the Decree in *Arizona v. California*. The Parties hereby affirm the entitlement and right of each State under such existing law to use and develop the water of the Colorado River System.

15. Term. This Agreement shall be effective as of the date of the first two signatories hereto, and shall be effective as to any additional Party as of the date of execution by such Party. Unless earlier terminated, this Agreement shall be effective for so long as the ROD and the ISG are in effect, and shall terminate upon the termination of the ROD and the ISG.

16. Authority. The persons and entities executing this Agreement on behalf of the Parties are recognized by the Parties as representing the respective States in matters concerning the operation of Lakes Powell and Mead, and as those persons and entities authorized to bind the respective Parties to the terms hereof. Each person executing this

Agreement has the full power and authority to bind the respective Party to the terms of this Agreement. No Party shall challenge the authority of any person or Party to execute this Agreement and bind such Party to the terms hereof, and the Parties waive the right to challenge such authority.